

# **EXHIBIT 1**

**Capital Reporting Company**

Page 1

1           IN THE UNITED STATES DISTRICT COURT FOR THE  
2                           DISTRICT OF COLUMBIA

3           -----:  
4           PAULA PAGONAKIS,                               :

5                           Plaintiff,                               :

6                           v.                               :

Case No.:

06-027

7           EXPRESS, LLC, e/k/a                               :  
8           LIMITED BRANDS, INC.,                               :

9                           Defendant.                               :  
10   :  
11           -----:

Washington, D.C.  
November 20th, 2006

12          Deposition of:

13                           PAULA PAGONAKIS,

14                           Called for oral examination by counsel for  
15          Plaintiff, pursuant to notice, at the offices of Bailey  
16          & Ehrenberg, PLLC, 1155 Connecticut Avenue, N.W., Suite  
17          1100, Washington, D.C., beginning at 1:00 p.m, before  
18          Teague Gibson of Capital Reporting, a Notary Public.

19  
20   \*   \*   .   \*   \*   \*  
21  
22

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1 A Correct.

2 Q You don't know a ballpark figure \$10,000,  
3 a hundred thousand, 200,000?

4 A I can't remember.

5 Q Can't remember any aspect of the  
6 settlement?

7 A I know I had to pay medical bills  
8 afterwards for almost 10 years.

9 Q I'm asking you what did you get?

10 A I don't recall.

11 Q You'll have to?

12 MR. EHRENBURG: We can try to get that  
13 information.

14 MR. CAMPELL: Give the name of her attorney  
15 and whatever documents are from that.

16 MR. EHRENBURG: I think we gave all those  
17 documents and the attorney's name is probably in  
18 there too but I'll go through them.

19 Q And do you have any continuing health  
20 problems as a result of that second car accident  
21 that occurred in 1995?

22 A Most definitely.

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1 Q And what are those?

2 A I have a traumatic brain injury. I have  
3 inner ear damage. I have cognitive processing  
4 difficulty. I have equilibrium problems. I have  
5 functional vision problems. I have fibromyalgia and  
6 I have persistent back and neck pain.

7 Q Anything else?

8 A That's what I can remember right now.

9 Q Have these been ongoing since 1995?

10 A Yes.

11 Q Continuous?

12 A Yes, all permanent. I also have  
13 difficulty with short-term memory.

14 Q Aside from the two auto accidents and this  
15 lawsuit have you been involved in any other  
16 litigation?

17 A No.

18 Q Do you remember filing any charges for  
19 Workers' Compensation injuries for any employer?

20 A I don't recall any.

21 Q Don't recall filing any -- you understand  
22 what Workers' Compensation is?

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1 A I don't remember.

2 Q Did anybody say you were being discharged  
3 because you were on an FMLA leave?

4 A I don't recall that.

5 Q Did anybody make any comments about your  
6 FMLA leaves?

7 A Yes.

8 Q Who?

9 A Kristin Bosley.

10 Q What did she say?

11 A She made offhanded comments under her  
12 breath and to other people about she would mimic me  
13 and make comments that indicated she questioned the  
14 validity.

15 Q Of your leave request or of your  
16 accommodation request?

17 A All of it.

18 Q When were these comments made? We're  
19 looking at some documents that show -- why don't we  
20 verify the timeframe. Look at Exhibit 1, says that  
21 your FMLA leave began on 12/8/03. Is that your  
22 understanding? Do you have any reason to disagree

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1 A December 23rd.

2 Q December 23 was your return to work date?

3 A Correct.

4 Q So you were on leave approximately from,  
5 and again we can't have your calendar, but just talk  
6 about these exhibits from December 8, 2003 until  
7 December 23, 2003?

8 A Yes.

9 Q You worked until February 3, 2004 when you  
10 went on an FMLA leave again, correct?

11 A Correct, Elise O'Niell also made comments.

12 (Pagorakis Exhibit No. 4 was marked)

13 Q Hancing you Defendant's Exhibit 4. It  
14 says effectively immediately March 18, 2004?

15 A I couldn't return to work.

16 Q I'm not asking you why. I'm asking is  
17 that the date March 18th?

18 MR. EHRENBURG: Object to the form. If you let  
19 her finish, you said she resigned and she was  
20 answering your question, so please let her finish.

21 MR. CAMPELL: Jason, this is for me to ask  
22 questions.

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1 client's testimony.

2 MR. CAMPBELL: Please don't raise your voice.

3 MR. EHREMBERG: Dave, don't start telling me  
4 how to act. Ask your questions and let's go. I'm  
5 allowed to object and then I can instruct her to  
6 answer so ask the question. You didn't let me  
7 finish my objection.

8 Q This document, Exhibit 4, shows that you  
9 resigned effectively March 18, 2004; is that  
10 correct?

11 MR. EHREMBERG: Object to the form, you can  
12 answer.

13 A I could not return to work.

14 Q I'm not asking you why, I'm saying is the  
15 date March 18th, 2004 when you resigned?

16 A March 18th I was supposed to go back to  
17 work after my medical leave was over and I  
18 physically, mentally, emotionally could not return  
19 under the circumstances I could not return to work  
20 physically, mentally, emotionally.

21 Q If you want to talk to your counsel you  
22 can, but when I ask a question I want an answer to

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1 (Record was read)

2 Q Are you saying they didn't take place  
3 while you were on leave?

4 A No, nobody called me while I was on leave.

5 Q So you returned to work, what was said to  
6 you about your FMLA leave?

7 A Offhand comments. I don't know that I can  
8 recall exactly at this time what people said, but  
9 there were just snide comments made to me and to  
10 other employees.

11 Q You can't recall any of the snide  
12 comments?

13 A With accuracy probably not at this time.

14 Q Who made these comments?

15 A Elise, Ana, Kristin Bosley.

16 Q Did you nonetheless ask for a second leave  
17 and it was granted?

18 A I didn't hear the first couple words.

19 Q You nonetheless asked for a second FMLA  
20 leave and it was granted?

21 A Yes.

22 Q You can't give us anything as to the



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1 understand what I'm asking you about?

2 A I don't think I can answer that because I  
3 never was trained in policies and procedures so.

4 Q So you don't know anything about -- you  
5 can't present any testimony in contradiction to what  
6 Express's policies and procedures are as to  
7 co-managers?

8 MR. EHRENBURG: Object to the form, you can  
9 answer.

10 A I don't think you can make a blanket  
11 statement. I did know some policies and procedures.

12 Q Let's go through what you know. Did you  
13 understand that the store was allocated a certain  
14 number of hours for work each week?

15 A Yes.

16 Q And how were those hours allocated?

17 A I wasn't part of the allocation process.

18 Q And a typical co-manager that was burning  
19 40 hours how were those hours allocated to the  
20 budget? If a co-manager was being paid for 40 hours  
21 a week on a salary were they allocated 40 hours  
22 towards the store hour allocation for the week?

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1           A     I really don't know that. There was  
2 something to do with extra hours and I don't think I  
3 can answer that.

4           Q     You don't know?

5           A     I don't think I know.

6           Q     Did you understand that there always had  
7 to be a manager on duty when the store was open?

8           A     Yes, not a key holding manager, not just a  
9 manager, a key holding manager.

10          Q     What did you understand that to be?

11          A     Someone who was trained as a manager and  
12 passed a key holder's exam to prove a competency of  
13 the responsibilities of a key holder.

14          Q     Were you a key holding manager?

15          A     I was not.

16          Q     There had to be some key holding manager  
17 at the Christiana Mall store always on the schedule;  
18 is that correct?

19          A     That's what I understood the policy to be.

20          Q     And one of those key holding managers  
21 always had to open and close the store; is that  
22 correct?

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1 Q November of 2003, say November 1, 2003?

2 A Yeah.

3 Q Were there any comments made -- are you  
4 alleging any comments or problems up until November  
5 1, 2003?

6 A Yes.

7 Q What are you alleging?

8 A From the time that Ana started to promote  
9 me and discuss higher options and opportunities for  
10 me with the company Kristin and Elise challenged  
11 that decision with Ana, made it known to me that  
12 they challenged it, made comments under their  
13 breath, made comments to other managers, made  
14 comments to employees and continually made comments  
15 to me. I was degraded, belittled, humiliated in  
16 front of other people, in front of customers.

17 Q When did these comments begin?

18 A I don't know that I'm going to be able to  
19 give you a date.

20 Q Shortly after transferring to Delaware,  
21 was it in 2003?

22 A I think I answered that. When Ana started

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1 by telling me that she had lost -- that my personnel  
2 file had been lost. She stated that since my  
3 personnel file -- they did not have my personnel  
4 file that I did not have -- she did not have  
5 documents to validate my disabilities so she could  
6 no longer accommodate me.

7 Q Look at Exhibit 5. Point you to on  
8 November 5th, 2003, see that?

9 A Yes

10 Q Your charge which was close in your time  
11 you were filing this charge on January 30th, 2004  
12 you agree within two months of that meeting, right?

13 A Yes.

14 Q At that time you say "I was informed by  
15 Tara Kessler, human resource generalist, that the  
16 respondent, Limited Brands, Inc. Express, would no  
17 longer provide me reasonable accommodation because  
18 person who initially provided the accommodation did  
19 not have the authority to do so." You see that?

20 A Yes.

21 Q Is that true?

22 A That was also what she told me.

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1 A No, I can't do that.

2 Q At some point you switched over to a  
3 full-time position?

4 A Yes.

5 Q Was Tara saying that as of this full-time  
6 position they didn't have the authority to  
7 accommodate you as to this?

8 A She didn't specify.

9 Q She asked you to provide medical  
10 documents, right?

11 A Correct.

12 Q During this timeframe from November 25th,  
13 2003 until you went on that leave, we've already  
14 verified the dates that you went on a leave of  
15 absence on December 8th, 2003, right?

16 A If that's the date we verified, yes.

17 Q So from November 25th, 2003 until December  
18 8, 2003 you only worked the daylight hours and they  
19 continued to accommodate you during that period,  
20 right?

21 A No.

22 Q What is it your testimony is?

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1           A       There were some times that I was assigned  
2   night.

3           Q       You had to work nights a couple times that  
4   week?

5           A       I don't know what week. There were some  
6   times I had to work nights.

7           Q       The meeting was on November 25th, 2003  
8   that you're saying Tara told you that they didn't  
9   have authority to grant you the accommodations?

10          A       I know that Sunday was the first time that  
11   I was required to work a night shift and it was  
12   after hours shift after the store closed.

13          Q       Did Tara tell you that during the  
14   accommodation process, during the review process,  
15   that they would accommodate your restrictions?

16          A       No, she said she would not accommodate  
17   anything, there was nothing she could do.

18          Q       So you went on an FMLA leave during the  
19   accommodation review?

20          A       No, I kept working.

21          Q       Why did you go on the FMLA leave, Exhibit  
22   1?

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1           A     Because I was completely having a  
2     breakdown. It was killing me. I was completely  
3     exhausted, emotionally drained, physically drained.  
4     Completely unable to stay awake. I couldn't do  
5     daily functions at home. I put every ounce of  
6     energy I had into the job and it was sucking the  
7     life out of me.

8           Q     How many nights did you work from November  
9     25th, 2003 until December 8, 2003?

10          A     First of all I already said I don't know  
11     and that's not relevant to this statement I just  
12     made.

13          Q     Well, it is relevant because November  
14     25th, 2003 is when you said that Tara told you they  
15     couldn't accommodate you, you went on leave on  
16     December 8, 2003 and you said that the shift sucked  
17     the life out of you. I'm asking how many shifts  
18     sucked the life out of you?

19          A     I didn't get days off. I didn't get  
20     breaks. I didn't get time to go to the bathroom. I  
21     didn't get lunch breaks. Very frequently I would go  
22     10 days of working without a day off. It doesn't

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1 Q Were you there to hear it?

2 A I was told by other managers that this was  
3 said to them.

4 Q What comments did you hear specifically  
5 from anybody directly to you?

6 A Comments like, oh, is the weather nice for  
7 you, don't quote this, this is the gist of the  
8 comments, it would be nice if I could not have to do  
9 this or that. It was ironic that Elise continually  
10 made comments about my schedule when she her self  
11 worked Monday through Friday for the most part till  
12 5:00 o'clock.

13 Q What other comments do you recall?

14 A My authority with the staff was  
15 continually challenged, people would get yelled at  
16 for speaking to me, they would get assigned bad,  
17 distasteful jobs. If I was speaking with an  
18 employee giving them a directive because I was  
19 responsible for the sales floor it would be  
20 challenged. Elise would come out to the floor and  
21 see me and come over and challenge, she continually  
22 challenged me as to what I was doing and why I was



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1 doing it. She would walk up to customers that I was  
2 helping and say I see no one's helping you. That's  
3 one thing I recall her specifically saying.  
4 Comments made as I walked past. She doesn't do  
5 anything, she just walks around here doing nothing.  
6 If I had to go get something in the room and  
7 back out on the sales floor I would walk past her,  
8 she would make a comment is that all you do is walk  
9 around, all these assumptions, harassing comments.

10 Q What else?

11 A All day long on and on and on.

12 Q What else?

13 A Many comments to every little thing. One  
14 time Elise and Kristin were doing something together  
15 over in an area and they called me over there and  
16 one of them said, oh, can I see your ring and she  
17 took my hand and said, oh, my God, that looks like  
18 an antique and the other one one was like putting  
19 her hands all over my face and rubbing my cheeks and  
20 they were touching me and I asked them to stop.  
21 They were like mocking me and making fun of me. One  
22 time Kristin slapped me in the face with her gloves.

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1 It goes on and on, any number of things, comments  
2 all day long.

3 Q You can't identify any other comments?

4 A I could if we have to just sit here and  
5 identify by comments. Somebody would come in and  
6 say hello and they'd get yelled at for talking to  
7 me. One time I came in to work, as I mentioned  
8 managers quite often came in late, and I'm an on  
9 time person, I along with other people would be  
10 sitting on the bench outside the store waiting for  
11 them to come and open the gates, and because we had  
12 already been there and been on time maybe it was 20  
13 after, that was 20 minutes that we weren't clocked  
14 in. The hourly people not getting paid for, myself  
15 not getting credited towards my time and so when  
16 that would happen you'd go to the closest computer  
17 you could to clock in to get your time clocked in  
18 and I would get singled out and told that that's not  
19 a good example to set. You should be totally  
20 prepared for work before you clock in. Nobody else  
21 would have that. Other people would be walking in  
22 doing the exact same thing and no comment was made

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1 to them.

2 Q Any other comments?

3 A Several other comments I can't recall  
4 right now.

5 Q We were talking about your accommodations  
6 from December 23, 2003 when you went on your second  
7 FMLA leave, you said they made you at times climb  
8 too high, climb ladders?

9 A They didn't make me climb because I  
10 refused to do it. I was given an assignment to  
11 completely take down all of the men's denim on the  
12 back wall which was, I don't know, 15, 20 feet high,  
13 refold it and put it back up.

14 Q And you just simply told them you couldn't  
15 do it and didn't do it?

16 A I got other people to help me do it and it  
17 didn't get completely done because -- I don't know.

18 Q How else did they not accommodate you  
19 during that period?

20 A They didn't give me breaks on a regular  
21 basis. If I needed to go to the bathroom, must be a  
22 thing with the company because if you ask to go to

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1 the bathroom and you wait a reasonable amount of  
2 time to make an adjustment to let me go I was denied  
3 going to the bathroom.

4 Q You weren't allowed to go to the bathroom?

5 A Wasn't allowed to go to the bathroom.

6 Q What other accommodations were you denied?

7 A Some lunches, wasn't even allowed to stop  
8 for lunch, or it would be so late in the day that I  
9 have a head injury, you're supposed to eat at  
10 regular intervals or it's not healthy for your head,  
11 normal people get lunch breaks.

12 Q What other ways were you not accommodated  
13 during this time period?

14 A Climbing, I told you they asked me to do  
15 higher levels of work and I was told to go out and  
16 do them on the sales floor in the middle of the  
17 store. Those were part of the accommodations  
18 originally granted. I don't know. I've gone  
19 through this. The scheduling, sometimes my day off  
20 would be Sunday, Monday and then I would work the  
21 whole rest of that week, the weekend all the way up  
22 until Friday, Saturday. So I worked like, what is

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1 the hours you're working but at the same point  
2 you're saying that you didn't know that your  
3 accommodations were granted to you, I'm confused?

4 MR. EHRENBURG: I object to the form. I don't  
5 think that was a question. If you understand it you  
6 can answer.

7 A No, no one ever told me what was needed to  
8 validate my disabilities beyond what I had  
9 presented. Even on top of that nobody would accept  
10 what I was offering, they'd say go to this  
11 department. I'd call that department, they'd say no  
12 this person -- there's documentation, there's all my  
13 e-mail communication, you got it all. There's  
14 continuous ongoing --

15 Q Anything in writing that you sent during  
16 January, February, March 2004 you produced?

17 A Yes, sir, plus all the verbal and phone  
18 calls. That's not all the communication there was,  
19 that is the written communication there was.

20 Q If you had all that why wouldn't you put  
21 in your resignation letter something more than just  
22 simply I'm resigning effective immediately?

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1           A       Why? I don't know. It's typical.  
2       Everybody else that left there's a follow-up  
3       interview, there's discussion. When I was out on  
4       leave nobody would even talk to me. I called, I  
5       followed my requirements to call periodically to  
6       keep up-to-date with what's going on in the store.  
7       I asked to speak with management, never returned my  
8       phone calls. They never once called to see how I  
9       was, which is typical with everybody else that went  
10      out sick. No communication. They did not  
11      communicate with me no matter how hard I tried.

12                   (Pagorakis Exhibit No. 8 was marked)

13           Q       Hancing you Defendant's Exhibit 8. Is  
14      that your signature on that document?

15           A       Yes.

16           Q       You follow up six days later with a second  
17      resignation follow-up letter, right?

18           A       Yes.

19           Q       In this time you have six days to think it  
20      through and I guess it says faxed, I take it that  
21      the letter I just showed you about the March 18th,  
22      2004 letter resignation you actually faxed it that

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1 Q Did you talk to Kristin?

2 A No.

3 Q The answer is you didn't talk to anybody  
4 about the resignation, right?

5 MR. EHRENBURG: Object to the form, you can  
6 answer.

7 A I'm not going to say that. I tried for  
8 months to talk about my job situation. You're  
9 making it sound like I just flipped off this letter  
10 and refused to speak to anyone. No, I'm sorry, I  
11 did everything I could. I exhausted myself  
12 completely to the point of mental, psychological,  
13 physical breakdown trying to talk to get this  
14 resolved with, as you can see, no response, no  
15 resolution, no response.

16 Q Why didn't you attempt return to work and  
17 continue to work as you did for the month before  
18 your leave?

19 A Because it was killing me. Because after  
20 all these months I was facing going back to work and  
21 receiving the same harassment, the same non-help  
22 with my disability accommodations, the same run

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1 around. We don't know who to send the medical to.  
2 We don't know what medical information is needed. I  
3 was facing -- I already tried twice for months. How  
4 many times would you keep going back and trying and  
5 being beat to a pulp across the board to the point  
6 where you weren't even a functional human being.  
7 Would you stand in line and raise your hand and say,  
8 yes, give it to me again.

9 Q Have we testified to all the facts that  
10 supported this claim that you were beaten to a pulp?

11 MR. EHRENBURG: Object to the form.

12 A I didn't hear you.

13 Q Have you testified to everything today as  
14 to the facts leading to this conclusion that you  
15 were beaten to a pulp as a human being?

16 A I'm not answering that.

17 Q Is there any other facts?

18 A That was not a literal --

19 Q You've used these?

20 A Nobody physically beat me.

21 MR. EHRENBURG: You can ask him to rephrase the  
22 question if you don't understand it.



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1 mentioned that they had recruited you; is that  
2 correct?

3 A Yes.

4 Q And can you tell me when you first  
5 expressed interest to someone at J. Crew about  
6 possibly working there?

7 A I would say within the first couple months  
8 after I no longer worked at Express.

9 Q So did you speak to anyone about being  
10 interested in a position there before you left  
11 Express?

12 A No.

13 Q Were you ever trained to be co-manager?

14 A No, Kristin even said she asked Ana and  
15 Ana told her she didn't have to train me.

16 Q Were you ever -- is Kristin Kristin  
17 Bosley?

18 A Yes.

19 Q And Ana is that Ana Klancic?

20 A Yes.

21 Q Were you ever trained to be a key holder?

22 A No.